

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

REGINA B. and MALAYSIA B.,

Plaintiffs,

v.

COMMISSIONER OF SOCIAL SECURITY,
Defendant.

Civil Action No.
1:21-cv-00685-SDG

OPINION AND ORDER

This matter is before the Court on *pro se* Plaintiffs Regina B. and Malaysia B.'s Objections [ECF 9] to United States Magistrate Judge Linda T. Walker's Final Report & Recommendation (R&R) [ECF 7], recommending dismissal of this action. For the following reasons, Plaintiffs' Objections [ECF 9] are **OVERRULED**, and the R&R [ECF 7] is **ADOPTED** as the Order of this Court.

Plaintiff Regina B. seeks judicial review of the final decision by the Commissioner of the Social Security Administration (Commissioner) denying disability benefits to her daughter, Malaysia B.¹ Judge Walker's April 12 R&R granted Plaintiffs' application for leave to proceed *in forma pauperis*, but it recommended that the action be dismissed for lack of jurisdiction.

¹ ECF 5.

The R&R correctly notes that the Court must *sua sponte* raise the question of jurisdiction “at the earliest possible point in the proceeding,” and the Court has no jurisdiction over this case because Plaintiffs’ appeal is time-barred.² The R&R further explains that Plaintiffs needed to have filed suit within sixty days of receiving the Commissioner’s final decision denying Malaysia B. benefits.³ 42 U.S.C. § 405(g). *See also* 20 C.F.R. §§ 404.981, 416.1481, 422.210(c). “[U]nless there is a reasonable showing to the contrary,” receipt is “presumed to be 5 days after the date” of the Commissioner’s decision.⁴ 20 C.F.R. § 422.210(c); *see also id.* § 404.901 (“Date you receive notice means 5 days after the date on the notice, unless you show us that you did not receive it within the 5-day period.”); *id.* § 416.1401 (same). Because Plaintiffs seek review of a decision dated November 5, 2020, Judge Walker correctly presumed that they received notice on November 10, 2020. Judge Walker further found that Plaintiffs did not submit evidence that shows the Commissioner’s decision was issued on a different date, so “Plaintiffs were

² *Id.* at 1–2 (quoting *Kirkland v. Midland Mortg. Co.*, 243 F.3d 1277, at 1279–80 (11th Cir. 2001)).

³ *Id.* at 2.

⁴ *Id.*

required to file this action by January 9, 2021.”⁵ Plaintiffs filed suit on February 16; therefore, Judge Walker recommended dismissal.⁶

A party challenging a R&R issued by a federal magistrate judge must file written objections that specifically identify the portions of the proposed findings and recommendations to which an objection is made and must assert a specific basis for the objection. *United States v. Schultz*, 565 F.3d 1353, 1361 (11th Cir. 2009). Plaintiffs objected on April 26, arguing that “the dates on the review request and the USPS’s stamp on [the] front [of the] envelope . . . should reflect timeliness.”⁷ In other words, Plaintiffs argued that they filed suit before January 9, 2021.

The district court must “make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1); *Jeffrey S. ex rel. Ernest S. v. State Bd. of Educ. of Ga.*, 896 F.2d 507, 512 (11th Cir. 1990). After a *de novo* review, the Court finds that Plaintiffs mailed the envelope containing their initial complaint on February 11, 2021, according to its postmark.⁸ At that point, Plaintiffs were already out of time

⁵ *Id.* at 3.

⁶ *Id.* at 3–4.


⁷ *Id.*

⁸ ECF 1-3, at 3.

to file this action and well past their January 9, 2021 deadline. Moreover, Plaintiffs present no evidence to suggest that the Commissioner's decision was issued on any date other than November 5, 2020—the date they include in their initial complaint.⁹ As a result, the Court finds that it has no jurisdiction to review the Commissioner's final decision.

Plaintiffs' Objections [ECF 9] are **OVERRULED**, and the R&R [ECF 7] is **ADOPTED**. The Clerk is **DIRECTED** to close the case.

SO ORDERED this 28th day of March, 2022.



Steven D. Grimberg
United States District Court Judge

⁹ ECF 1-1; ECF 1-2.